

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY HEINE,
Plaintiff, Civil Action No. 1:21-cv-4574
- against -

DANIEL BENJAMIN LAWSON and FEDEX FREIGHT,
INC.,
Defendants.

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NOTICE OF REMOVAL

TO THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK:

Defendants FEDEX FREIGHT, INC., and DANIEL BENJAMIN LAWSON (hereinafter “Defendants”), by their undersigned attorneys, hereby file this Notice of Removal pursuant to 28 U.S.C. § 1332, 1441, 1446, and respectfully request that this action be removed from the Supreme Court of the State of New York, County of Orange, to the United States District Court, Southern District of New York, as follows:

1. Plaintiff, Anthony Heine (“Heine”) commenced the above-entitled action in the Supreme Court of the State of New York, County of Orange (Index No. EF007087-2020) on November 30, 2020. A copy of the Summons and Complaint is attached to this Notice as **Exhibit A**. Process was served upon Defendant FedEx Freight on December 4, 2020 as demonstrated by the Affidavit of Process Server attached to this Notice as **Exhibit B**. Process was served upon Defendant Daniel Benjamin Lawson on December 8, 2020 as demonstrated by the Affidavit of Process Server attached to this Notice as **Exhibit C**.

2. Defendant, FEDEX FREIGHT, INC., is a defendant in the civil action commenced by Plaintiff ANTHONY HEINE (hereinafter “Plaintiff”) in the Supreme Court of the State of New

York, County of Orange, bearing the same caption as above stated, under Index Number: EF007087-2020.

3. Defendant, DANIEL BENJAMIN LAWSON, is a defendant in the civil action commenced by Plaintiff in the Supreme Court of the State of New York, County of Orange, bearing the same caption as above stated, under Index Number: EF007087-2020.

4. Defendants filed their Answer to the Complaint on February 1, 2021. A copy of Defendants' Answer to the Complaint is attached to this Notice as **Exhibit D**. No further proceedings or pleadings have been had in that action.

5. Plaintiff alleges that he was injured on May 23, 2020 when a FedEx Freight vehicle allegedly driven by Defendant Daniel Benjamin Lawson came in contact with the Plaintiff, a pedestrian. (Ex. A, Complaint ¶ 15).

6. The Complaint further alleges that Plaintiff was caused to sustain severe and serious personal injuries to his mind and body, some of which, upon information and belief, are permanent with permanent effects of pain, disability, disfigurement and loss of body function. (Ex. A, Complaint ¶ 20). However, Plaintiff did not assert a damages amount or amount in controversy in his Complaint, and there was no other indication from the Complaint or the record of the State proceeding as to the quantum of damages or amount in controversy in this action. Therefore, Defendant FedEx Freight sent Plaintiff a Demand for Verified Bill of Particulars on February 1, 2021.

7. On May 3, 2021, Defendants received Plaintiff's Response to the Demand for Verified Bill of Particulars, dated April 30, 2021, and when questioned in those demands regarding Plaintiff's special damages to date, Plaintiff responded that he has Hospital Expenses approximating \$537,330.23 and continuing, amongst other expenses, as demonstrated by

Plaintiff's response to Defendants Demand for Verified Bill of Particulars attached hereto as **Exhibit E.**

8. Given the foregoing, the April 30, 2021 response to discovery by Plaintiff is the "other paper from which it may first be ascertained that the case is one which is or has become removable" since, upon information and belief, the amount sought by Plaintiff exceeds \$75,000.00.

9. Subject matter jurisdiction accordingly exists in this matter based on diversity jurisdiction.

10. There is complete diversity of citizenship between Plaintiff and Defendants in this action as follows:

- a. Plaintiff alleges in his Response to Demand for Verified Bill of Particulars that his address is 41 Kretch Circle, Wappingers Falls, New York 12590.
- b. Defendant FedEx Freight, Inc. was at the time this action was commenced, and remains a citizen of the State of Arkansas, its place of incorporation and the state in which it maintains its principal place of business.
- c. Defendant Lawson resides at 201 Oak Ave, Pikesville, Maryland 21208.

11. Therefore, this action is between citizens of completely different states pursuant to 28 U.S.C. § 1332(a)(1).

12. Based upon the foregoing, this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that diversity of citizenship exists and the amount in controversy upon information and belief exceeds \$75,000.00, exclusive of interest and costs.

13. Removal of the action is also timely pursuant to 28 U.S.C. § 1446(b)(3) as this Notice of Removal is filed within thirty (30) days after receipt of Plaintiff's April 30, 2021

Response to Demand for Verified Bill of Particulars by which it was ascertained that the amount in controversy in this case exceeds \$75,000 thereby becoming removable at that time.

14. Defendants will provide written notice of the filing of this Notice of Removal, as required by 28 U.S.C. § 1446(d), to counsel for Plaintiff via the Electronic Case Filing System and a courtesy copy via email correspondence.

15. A copy of this notice will be filed with the Supreme Court of New York, Orange County Clerk, as required by 28 U.S.C. § 1446(d), also via the New York Courts Electronic Case Filing System.

16. By filing this Notice of Removal, Defendants do not waive any defenses that may be available to them and does not concede that the allegations of the Complaint state a valid claim under applicable law.

WHEREFORE, Defendants FEDEX FREIGHT, INC. and DANIEL BENJAMIN LAWSON, provide notice that the action pending in the Supreme Court of the State of New York, County of Orange is hereby removed therefrom to this Court.

Dated: New York, New York
May 21, 2021

Respectfully submitted,

KMA ZUCKERT LLC

By: 

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